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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Amendment to the Commission's )  
Rules to Establish New )  
Narrowband Personal )  
Communications Services )

GEN Docket No. 90-314  
ET Docket No. 92-100  
RM-7617, RM-7760, RM-7782  
RM-7860, RM-7977, RM-7978  
RM-7979, RM-7980, PP-4,  
PP-5, PP-11, PP-14, PP-35  
through PP-40, PP-53,  
PP-69, PP-79 through  
PP-85

To the Commission:

OPPOSITION AND COMMENTS ON PETITIONS FOR  
RECONSIDERATION AND/OR CLARIFICATION

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SUMMARY

The Commission's decision on the various issues addressed in its First Report and Order on narrowband PCS will shape the development of a wide array of new paging services, including advanced voice paging, two-way acknowledgement paging, data messaging, and both one-way and two-way messaging and facsimile. Public demand for these services is expected to be great, and it is essential that the Commission's regulations allow for the most efficient and effective possible use of the available spectrum.

On September 10, 1992, PageMart, Inc. ("PageMart"), filed a Petition for Reconsideration raising issues regarding the Commission's narrowband PCS channelization plan, its construction requirements, and on various aspects of the Commission's decision to grant a pioneer's preference to the Mobile Telecommunication Technologies Corporation ("Mtel"). In the instant document, PageMart addresses certain of the petitions for reconsideration and/or clarification that were filed by other parties in this proceeding.

Specifically, PageMart shares the concerns raised by PageNet, Inc. ("PageNet") regarding the Commission's decision to use Basic Trading Areas and Major Trading Areas as the licensed service area definitions. PageMart also

comments on the concerns raised by PageNet and Pacific Bell regarding aspects of the Commission's grant of a pioneers' preference to Mtel. Finally, PageMart comments on a proposal made by Mtel to modify the construction requirements.

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To the Commission:

OPPOSITION AND COMMENTS ON PETITIONS FOR  
RECONSIDERATION AND/OR CLARIFICATION

PageMart, Inc. ("PageMart"), by its attorneys,  
submits the following comments on the petitions for  
reconsideration and/or clarification filed in response to  
the First Report and Order ("Order") issued in the above  
captioned proceeding by Paging Network, Inc. ("PageNet"),  
Pacific Bell and Mobile Telecommunications Technologies,  
Inc. ("Mtel").

I. INTRODUCTION

In the Order, the Commission established  
regulations for new narrowband personal communications  
services ("PCS") on spectrum in the 900 MHz band. The

Commission also ruled on a number of requests for pioneer's preferences relating to narrowband PCS.

The Commission's decision on the various issues addressed in the Order will shape the development of a wide array of new paging services, including advanced voice paging, two-way acknowledgement paging, data messaging, and both one-way and two-way messaging and facsimile. Public demand for these services is expected to be great, and it is essential that the Commission's regulations allow for the most efficient and effective possible use of the available spectrum.

On September 10, 1992, PageMart filed a Petition for Reconsideration raising issues regarding the Commission's narrowband PCS channelization plan, its construction requirements, and on various aspects of the Commission's decision to grant a pioneer's preference to Mtel. In the instant proceeding, PageMart addresses certain of the petitions for reconsideration and/or clarification that were filed by other parties in this proceeding.

## II. PETITION FOR RECONSIDERATION AND CLARIFICATION OF PAGENET.

PageNet filed a detailed petition for reconsideration and clarification which focused on a number of issues, some of which were also raised by PageMart in its

petition for reconsideration. PageMart generally supports the views expressed by PageNet and makes the following specific comments regarding each of the elements of the PageNet petition.

A. PageMart Shares PageNet's Concern That The Commission's Reliance On BTA And MTA Regions Is Inappropriate For Paging Services.

PageMart shares PageNet's concern that the Commission has inappropriately chosen Basic Trading Areas ("BTAs") and Major Trading Areas ("MTAs") as licensed service area definitions.<sup>1/</sup> As the Order points out, the majority of parties commenting on the narrowband PCS rulemaking favor large regional or nationwide licensed service areas.<sup>2/</sup> Indeed, the Commission notes that at least one commenter on the narrowband PCS rulemaking argued that efficiencies in wireless messaging dictate nationwide and regional licensed service areas, and that larger licensed service areas are needed in order to achieve the economies of scale necessary for development of low cost personal receivers.<sup>3/</sup> A few commenters, however, supported the provision of smaller licensing areas for narrowband

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<sup>1/</sup> See Order at 12-14; PageNet Petition at 4-17.

<sup>2/</sup> Order at 12.

<sup>3/</sup> Id.

PCS.<sup>4/</sup> The Commission has apparently chosen to utilize the BTA/MTA designations as licensed service areas in an effort to compromise between the larger service areas suggested by the majority of commenters, and the smaller areas preferred by a few others.<sup>5/</sup>

As PageNet points out, however, use of the BTA/MTA service areas is not very practical or cost-efficient for high-powered paging systems, and will likely result in severe underutilization of spectrum, especially at the BTA level.<sup>6/</sup> Moreover, the combination of small BTA boundaries and the need to ensure that signals operating in different service areas do not overlap these boundaries will necessarily result in either the inefficient, uneconomic use of numerous lower powered transmitters, or in the complete inability to provide service for large portions of certain BTAs.<sup>7/</sup> Indeed, as PageNet points out, the Commission's

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<sup>4/</sup> Id.

<sup>5/</sup> See id. at 13.

<sup>6/</sup> In addition, as PageNet notes, BTAs are not representative of existing local paging networks, which cover much larger geographic areas. See PageNet Petition at 10. Moreover, BTA service areas would not provide a large enough population base to justify constructing and operating advanced paging systems. See id. at 11.

<sup>7/</sup> See id. at 7-8. Similar concerns exist at the MTA level. In some MTAs, paging providers would have to  
(continued...)



decision to use fixed circles to define the service areas will result in large areas in between the MTAs and the BTAs that will go unserved.<sup>8/</sup> Unlike cellular systems, which utilize rural service areas to connect larger service areas, the narrowband PCS Order makes no similar arrangement for the connection of paging services between BTAs and MTAs.

The fact that paging providers may have a theoretical opportunity to aggregate MTAs does not resolve the concerns addressed above. While regulations governing the auction process are being addressed in a separate proceeding, there is nothing in the Commission's auction rulemaking that assures that the process will accommodate the need for paging licensees to acquire licenses for adjoining markets. The result will likely be that licensees

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<sup>7/</sup>(...continued)

limit their power transmissions to less than five watts, and then only if antenna height is less than 50 feet above average terrain. Id. at 13-14. MTAs are equivalent in size to the service area of wide-area local systems; MTAs simply are too small to support the large regional systems that most paging service providers require.

<sup>8/</sup> PageNet Petition at 8, note 5. PageMart is also concerned that paging operators could face problems under the allocation of return links at the BTA level. PageMart urges the Commission to allocate at least half of the eight 12.5 MHz return links reserved for existing licensees for use either at the MTA level, or, preferably, at the reconfigured regional level, assuming that the Commission adopts the proposals made by PageNet and supported herein.

will be forced to buy up licenses from other carriers, at significant additional costs, both to the paging providers and, ultimately, to the consumers.

The Order's move away from a traditional "site-based" licensing scheme does have substantial benefits, and the auction process undoubtedly will be facilitated by this licensing approach. However, the same benefits can be achieved without the substantial practical shortcomings inherent in the MTA/BTA scheme outlined in the Order, if the service areas are expanded to encompass much larger geographic blocks. As PageNet points out, by increasing the size of the service area designations, the number of boundaries and the number of coverage gaps could be significantly reduced. With larger geographic service areas, paging will be able to remain low cost and competitive, and most importantly, would be able to serve a far larger segment of the public.<sup>9/</sup>

**B. PageMart Agrees With PageNet And Reiterates Its View That The Commission's Construction Requirements Should Be Clarified.**

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As PageMart and PageNet both noted in their respective petitions for reconsideration, the Commission's construction requirements leave several important terms and

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<sup>9/</sup> PageNet Petition at 9.

requirements undefined.<sup>10/</sup> Because a licensee's failure to comply with the Order's construction requirements could lead to forfeiture of a license (including for facilities already constructed), it is imperative that the Commission make these requirements readily understandable. PageMart supports PageNet's request that the Commission clarify these requirements, and reiterates the concerns raised in its own petition regarding this matter.

C. PageMart Shares PageNet's Concerns Regarding Mtel's Pioneer's Preference.

PageMart and PageNet each addressed, in their respective petitions for reconsideration, their concerns that Mtel could receive a windfall by virtue of the Commission's Order, which imposes no requirement that Mtel build out the system for which it has been granted a pioneer's preference, and which similarly imposes no fees on Mtel for the grant of its PCS license.

PageMart supports PageNet's request for reconsideration of these elements of the Commission's Order. In the absence of a requirement that Mtel develop the system for which it has received a preference, Mtel could use its preference to obtain scarce spectrum for its existing paging services or for another service that would not have

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<sup>10/</sup> See PageMart Petition at 9; PageNet Petition at 17.

qualified for a preference under the Commission's pioneer preference rules.<sup>11/</sup>

In addition, the absence of a requirement that Mtel pay for the frequency that it will receive under the preference system will result in a financial windfall to Mtel not envisaged by the pioneer preference regulations. In this regard, PageMart takes note of the Commission's recent announcement of its initiation of a review of the pioneer's preference rules for purposes of assessing the effect of competitive bidding authority recently enacted by Congress.<sup>12/</sup> The Commission has full authority under basic principles of administrative law to address the inequities that would result from grant of a free license to Mtel within the context of the instant proceeding.<sup>13/</sup> There is no rational reason not to deal with this matter now.

PageMart also supports PageNet's request for clarification that Mtel not be allowed to receive its

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<sup>11/</sup> For example, Mtel could build a higher speed paging system using technology that is becoming widely available to the paging industry, such as that being developed by Telocator's high speed paging standards committee.

<sup>12/</sup> Notice of Proposed Rulemaking In the Matter of Review of Pioneer's Preference Rules (ET Docket 93-266), FCC 93-477, released October 21, 1993.

<sup>13/</sup> See SEC v. Chenery, 332 U.S. 194 (1947).

license before those of its competitors.<sup>14/</sup> As PageNet points out, the preference system was "designed to provide certainty of licensing to those who qualify."<sup>15/</sup> It was not intended to provide grantees with the advantage of receiving their licenses before those of their competitors. PageMart agrees with PageNet that Mtel should be licensed simultaneously with other narrowband PCS licensees, and should thus be forced to compete on an equal basis with other providers.

Finally, PageMart suggests that it would be appropriate for the Commission to limit Mtel's license to the principal geographic area in which the pioneer's preference technology was tested. Such an award would satisfy the goal of the pioneer's preference system, namely that grantees should be afforded the opportunity to recoup their risky investment in innovative technology without facing competing applications.<sup>16/</sup> At the same time, this approach would not provide grantees with rewards that dwarf

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<sup>14/</sup> PageNet Petition at 21.

<sup>15/</sup> Id.

<sup>16/</sup> See In the Matter of Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 F.C.C. Rcd. 3488 at ¶ 19 (1991).

the level of investment made in developing the systems for which a preference has been granted.

### III. PETITION FOR CLARIFICATION OF PACIFIC BELL.

Pacific Bell filed a petition for clarification of the Order asking that the Commission clarify that pioneer's preference grantees will not be exempt from paying license fees, given the new auction requirements. As noted above, PageMart has also requested that the Commission address this question. PageMart disagrees with Pacific Bell's suggestion, however, that the appropriate level of payment should be "a fee equal to the lowest winning bid for the appropriate licensing area."<sup>17/</sup>

There is no public interest basis for permitting Mtel or any other pioneer's preference grantee to pay anything less than the full fair market value of the license being awarded. While that value is not as easily determined in the absence of competitive bidding, it would seem that, rather than a "lowest winning bid" standard, pioneer preference grantees should be required to pay, at a minimum, the average of the winning bids for comparable markets, perhaps with a demographic weighting formula or calculated on a per-"pop" basis. To provide otherwise would maintain a

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<sup>17/</sup> Pacific Bell Petition at 2-3.

financial advantage for pioneer's preference grantees, something not envisaged by the preference rules.

IV. MTEL PETITION FOR CLARIFICATION OR PARTIAL RECONSIDERATION.

Mtel's petition requests that the Commission clarify the ambiguous terms in its construction requirements. As noted above, PageMart has made a similar request and therefore supports Mtel's petition in this respect.

Mtel also petitions for a clarification of the construction requirements to allow for the use of population benchmarks in addition to geographic criteria.<sup>18/</sup> Specifically, Mtel suggests that the Commission permit nationwide licensees to meet the construction requirements by serving 37.5 percent of the U.S. population within five years of being licensed and 75 percent of the population within ten years of being licensed.<sup>19/</sup>

PageMart agrees with Mtel's assessment that utilizing only geographic criteria could lead to coverage in sparsely populated areas where service is not needed. PageMart also believes that the absolute minimum population benchmark for nationwide licensees should be 75% of the U.S.

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<sup>18/</sup> See Mtel Petition at 4.

<sup>19/</sup> Id. at 4-5.

population within 10 years of being licensed; an even higher figure might be appropriate. To permit a nationwide licensee to meet the construction requirements by serving a lesser proportion of the population could encourage speculation and warehousing, and is not necessary to establish the desired flexibility that most paging providers will require.

#### CONCLUSION

The Commission's decisions on the issues addressed in the Order will have a far-reaching impact on the ability of paging providers to continue to provide low cost, competitive and innovative paging services. PageMart believes that the Commission's Order goes a long way towards accomplishing this goal. To the extent, however, that the Commission can clarify and modify its rules to accommodate the concerns expressed by PageMart, the paging industry's ability to serve the public and to remain a viable, competitive force in the nation's economy will be greatly enhanced.

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October 25, 1993



Certificate of Service

I, Ginger S. Pribble, do hereby certify that copies of the foregoing Opposition and Comments on Petitions for Reconsideration and/or Clarification of PageMart, Inc. were served via first-class, postage prepaid mail, on this 25th day of October, 1993, to the parties listed below.

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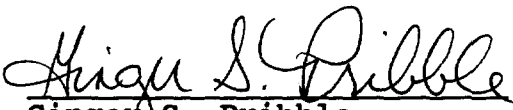
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